JOHN D. BAKER
v.
ANADARKO AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 89-52-A Decided August 3, 1989

Appeal from a decision of the Anadarko Area Director, Bureau of Indian Affairs, denying a request to invalidate a quitclaim deed of certain lands to Pottawatomie County, Oklahoma, signed by the Commissioner of Indian Affairs.

Dismissed.

1. Appeals: Generally--Bureau of Indian Affairs: Administrative Appeals: Filing: Mandatory Time Limit

A notice of appeal from a decision of the Commissioner of Indian Affairs that is not timely filed will be dismissed.

APPEARANCES: John D. Baker, pro se.

OPINION BY CHIEF ADMINISTRATIVE JUDGE LYNN

Appellant John D. Baker seeks review of a January 26, 1989, decision of the Anadarko Area Director, Bureau of Indian Affairs (BIA; appellee), denying his request to invalidate a December 17, 1959, quitclaim deed. For the reasons discussed below, the Board of Indian Appeals dismisses this appeal as being untimely filed.

Background

On March 3, 1959, the Citizen Band Potawatomi Indian Tribe of Oklahoma, Kickapoo Tribe of Oklahoma, Sac and Fox Tribe of Oklahoma, and Absentee Shawnee Tribe of Oklahoma, 1/ (tribes) through their duly appointed tribal representatives, recommended that the Pottawatomie County Hospital Committee be granted the S½ of lot 2, and that part of the SW¼ SE¼ NW¼ lying west of the center line of Oklahoma State Highway No. 18, all being in sec. 31, T. 10 N., R. 4 E., Indian Meridian, Pottawatomie County, Oklahoma, and containing 19.87 acres, more or less. The land was to be used for a hospital. The Mission Hill Memorial Hospital currently occupies this site.

1/ The Absentee Shawnee Tribe further consented by separate resolution dated Apr. 1, 1959.

On December 17, 1959, a quitclaim deed for this property was executed by the Commissioner of Indian Affairs (Commissioner) to Pottawatomie County pursuant to the Act of June 4, 1953, as amended, 25 U.S.C. § 293a (1982), and authority delegated by the Secretary of the Interior (Secretary) in Order No. 2508, Amendment No. 8, published at 19 FR 4585 (July 24, 1954). The conveyance noted four conditions: (1) the tract was subject to road right-of-way easements granted to the Oklahoma State Highway Commission in 1921 and 1926; (2) all mineral deposits in the land together with the right to prospect for and remove those deposits were reserved to the United States; (3) the grantee was to use the property for school or other public purposes only; and (4) the grantee was required to make the property available to Indians and non-Indians on the same terms, unless otherwise approved by the Secretary.

On September 25, 1988, appellant, who states he is a member of the Citizen Band Potawatomi Indian Tribe, filed with the Superintendent, Shawnee Agency, BIA (Superintendent), a challenge to the administrative action taken by the Commissioner in executing the deed. By letter dated November 9, 1988, the Acting Superintendent informed appellant that the points raised were "legal issues against the Federal Government's action and can only be addressed by the Federal Courts. Consequently, our only recommendation is that you retain the services of an attorney and file an action in the United States Federal District Court to pursue your position" (Letter at 1).

Because the November 9, 1988, letter did not set forth any right of appeal, appellant sent an appeal to the Washington, D.C., BIA office. That office referred the matter to appellee, in accordance with appeals regulations in 25 CFR Part 2 (1988) which provided a right of appeal from a Superintendent's decision to the Area Director. On January 26, 1989, appellee responded to appellant's appeal setting forth some of the background of the conveyance, and declining to take further action on the matter.

Appellant's appeal of this decision to the Washington, D.C., BIA office was pending on March 13, 1989, the date new appeals regulations for BIA and the Board took effect. 2/ The appeal was transferred to the Board on May 16, 1989, for consideration under the new procedures. By notice of docketing dated May 18, 1989, the Board noted that appellant had already filed a brief in support of his position, and so gave opposing parties an opportunity to respond.

On June 6, 1989, the Board received a motion from appellant seeking (1) copies of certain documents in the administrative record; (2) an order making the four tribes named above parties to this proceeding; and (3) an order for the tribes to answer certain interrogatories appellant had propounded. By order dated June 19, 1989, the Board sent the requested

2/ See 54 FR 6478 and 6483 (Feb. 10, 1989).

documents to appellant and denied his other two requests. In addition, the Board ordered appellant to show cause why this appeal should not be dismissed for lack of standing and/or the failure to file a timely notice of appeal. 3/

On July 25, 1989, the Board received a response to its show-cause order and a renewed motion to make the tribes parties based upon appellant's determination that the Board's June 19, 1989, order showed that the Board had not yet decided whether or not the tribes were parties. On July 31, 1989, the Board received a motion from appellant asking it to stay further proceedings pending consideration by the court of an alleged petition for writ of mandamus filed with the United States District Court for the Eastern District of Virginia. Appellant states that the petition asks the court to order the Board to "perform its mandatory duty" and decide whether or not the four tribes are parties. 4/

Discussion and Conclusions

The Board first reiterates that it specifically denied appellant's motion to make the four tribes parties to this appeal in its June 19, 1989 order. 5/

The deed appellant challenges was executed in December 1959. His first inquiries were made in early 1985, some 25 years after the date of the administrative action for which he seeks review. Assuming arguendo, that appellant has standing to bring this appeal, he has not shown that there is a right to bring this administrative action 25 years after the decision at issue was rendered. 6/

3/ The order further gave opposing parties an extension of time to file answers both to the merits of appellant's appeal and to his response to the show-cause order. Based on the following discussion, the Board finds that this case can and should be expeditiously resolved without answers from opposing parties.

4/ The Board has no knowledge of the filing of any complaint with the district court except as stated in appellant's motion. It has not been served with a complaint.

5/ The Board notes that in his response to the show-cause order, appellant states he "demanded" that the Citizen Band Potawatomi Tribe bring an action in Federal court concerning the deed at issue here, and that the tribe did not do so (Response at 1). The Board further observes that although appellant has served the remaining three tribes with all of the documents filed with the Board, no tribe has sought to intervene or otherwise appear in this proceeding.

6/ Appellant's responses to the issue of the timeliness of his appeal raised in the Board's show-cause order address only factors relevant to the question of whether or not appellant would be barred from bringing an action in Federal court against the Department. He does not show any reason for the passage of 25 years between the date of the deed at issue and his filing of a request for administrative relief from that deed.

The Department published a notice of proposed rulemaking in 24 FR 9545 (Nov. 28, 1959), proposing to add 25 CFR Part 2 to the BIA's regulations. This part would set forth procedures for appealing decisions of lower BIA officials to the Commissioner and the Secretary. The rules, which were published as final in 25 FR 9106 (Sept. 22, 1960), provided in 25 CFR 2.22 (1961) that an interested party had 20 days from the date of mailing of the Commissioner's decision in which to file an appeal from that decision with the Secretary. This regulation remained unchanged until 1975, when the Board was delegated the Secretary's review authority over decisions rendered by the Commissioner. 40 FR 20626 (May 12, 1975). At that time, 25 CFR 2.19(c)(2) (1975) provided that appeals from decisions rendered by the Commissioner could be appealed to the Board under regulations set forth in 43 CFR 4.354 and 4.355. The Board's appeal regulations were published in 40 FR 20820 (May 13, 1975), and provided in 43 CFR 4.354 (1976) that a notice of appeal from a Commissioner's decision must be filed within 45 days from service. The Board's regulations were amended at 46 FR 7337 (Jan. 23, 1981), so that 43 CFR 4.354 (1980) became 43 CFR 4.332 (1981) and required an appellant to file a notice of appeal within 60 days from receipt of the decision being appealed.

Initially, the Board notes that there has never been a right to seek review of an administrative action of the Commissioner through a petition filed with an Agency Superintendent. Any such request for review should have been filed with the Secretary or the Board, depending upon when the request was filed.

Furthermore, there has always been a time limit on the filing of administrative notices of appeal from a decision of the Commissioner. At no time since the deed at issue was executed has that time period been longer than 60 days from receipt of the decision. The time period was significantly shorter from 1960 through 1975, when it was 20 days from the mailing of the decision. Even if appellant were to argue that he did not "receive" the decision until he began his inquiries to the Superintendent in early 1985, 7/ he still did not file any form of request for review until September 25, 1988. This is still more than 3 years too late. 8/ When no timely appeal is taken from a decision rendered by a Departmental official, that decision becomes final.

[1] The Board has frequently held that notices of appeal not timely filed with BIA must be dismissed. See, e.g., Cahoon v. Portland Area Director, 17 IBIA 187 (1989), and cases cited therein. Appellant's "petition," which actually seeks administrative review of the Commissioner's December 17, 1959, execution of the quitclaim deed, must similarly be dismissed.

7/ Appellant has made no such argument.

8/ Thus, even if appellant were reargue that the Superintendent should have forwarded his request to some other BIA or Departmental official, the request was still not timely filed.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal from the Anadarko Area Director's January 26, 1989, order is dismissed on the grounds that the original petition for administrative review was not timely filed. 9/

_____
Kathryn A. Lynn
Chief Administrative Judge

I concur:

_____
Anita Vogt
Administrative Judge

9/ Any motions not previously acted upon are hereby denied. Appellant may also be seeking review of a denial of information allegedly requested under the Freedom of Information Act (FOIA), 5 U.S.C. § 552 (1982). Regulations governing release of information under the FOIA are found in 43 CFR Part 2, Subpart B. Appeals are governed by 43 CFR 2.18. The Board has no role in that appeal process.